Nos. 01-950, 01-1018

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In the Supreme Court of the United States

HILLSIDE DAIRY, INC., ET AL.,

Petitioners,

v.

WILLIAM J. LYONS, JR., Secretary, Department of Food & Agriculture, State of California, ET AL.,

Respondents.

PONDEROSA DAIRY, ET AL.,

Petitioners,

v.

WILLIAM J. LYONS, JR., Secretary, Department of Food & Agriculture, State of California, ET AL.,

Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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CERTIORARI GRANTED JANUARY 10, 2003

3 PP

TABLE OF CONTENTS

Page

Relevant Docket Entries Not Included 1

Relevant Docket Entries 2

Federal Agricultural Improvement and Reform Act of 1996 (1996 Farm Bill), Pub. L. No. 104-127, §§ 143-145, 110 Stat. 888, 915-918 (codified at 7 U.S.C. §§ 7253-7255) 17

California Food and Agricultural Code §§ 61801-61802, 62077-62078, 62700-62704, 62711, 62716-62717 23

California Department of Food and Agriculture, Pooling Plan for Market Milk as Amended, effective July 1, 1997 [excerpts] 32

Order Granting Petitions for Writs of Certiorari 61

RELEVANT DOCKET ENTRIES NOT INCLUDED

The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear at the pages indicated in the appendix to the Petition for a Writ of Certiorari in No. 01-950:

Opinion of the United States Court of Appeals
for the Ninth Circuit, dated August 9, 2001 ..... A1

Opinion and Order of the United States District Court
for the Eastern District of California,
dated July 21, 1999 ..... A16

Order of the United States Court of Appeals
for the Ninth Circuit, dated September 24, 2001 ... A59

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

97-CV-1179

HILLSIDE DAIRY, INC, ET AL
v.

VENEMAN, ET AL

RELEVANT DOCKET ENTRIES

DATE	#	DOCKET ENTRY
6/26/97	1	COMPLAINT for other statutes, fee status paid, receipt # 179419, assigned to Judge Garland E. Burrell referred to Magistrate Judge John F. Moulds (chl) [Entry date 06/27/97] [2:97cv1179]
6/27/97	5	MOTION for preliminary injunction by plaintiff Motion Hearing Set for 9am on 7/28/97 (gk) [Entry date 07/01/97] [2:97cv1179]
7/14/97	16	BRIEF IN OPPOSITION by defendant to motion for preliminary injunction by plaintiff [5-1] (chl) [Entry date 07/15/97] [2:97cv1179]

DATE	#	DOCKET ENTRY
7/25/97	30	ORDER by Judge Garland E. Burrell ORDERING related case(s) 2:97-cv-1179 with member cases 2:97-cv-1185 (cc: all counsel) (ndd) [Entry date 07/25/97] [2:97cv1179]
8/12/97	40	ORDER by Judge Garland E. Burrell ORDERING pltfs Ponderosa Dairy's reply to dfts' opposition to motion for preliminary injunction, file 7/28/97, the order striking the document is VACATED [31-1], [29-1]; pltfs' motion for preliminary injunction relief is GRANTED in part and DENIED in part; [4-1], [5-1] (cc: all counsel) (ljr) [Entry date 08/12/97] [2:97cv1179 2:97 cv1185]
8/15/97	41	NOTICE OF MOTION AND MOTION to dismiss by defendant Ann Veneman and A J Yates motion TO BE HEARD by Judge Garland E. Burrell; Motion Hearing Set For 9am on 9/22/97 (gk) [Entry date 08/19/97] [2:97cv1179]
4/1/98	71	AMENDED COMPLAINT [1-1] by Hillside Dairy, Inc in 2:97-cv-01179, A&A Dairy, Inc in 2:97-cv-01179, Milky Way Farm, Inc in 2:97-cv-01179 (kdc) [Entry date 04/03/98] [2:97cv1179]

DATE	#	DOCKET ENTRY
4/20/98	73	NOTICE OF MOTION AND MOTION to dismiss amended complaint by defendant Hearing set for 5/18/98 at 9:00am (chl) [Entry date 4/20/98] [2:97cv1179]
6/3/98	84	SECOND AMENDED COMPLAINT [71-1] by plaintiffs (dd) [Entry date 06/04/98] [2:97cv1179]
8/3/98	96	ORDER by Judge Garland E. Burrell ORDERING motion to dismiss amended complaint by defendant [73-1] GRANTED in 2:97-cv-01179: Plaintiff is granted 20 days to file and serve a second amended complaint (cc: all counsel) (gm) [Entry date 08/03/98] [2:97cv1179 2:97cv1185]
2/8/99	121	STIPULATION AND ORDER by Judge Garland E. Burrell: dft William J Lyons Jr substituted as Secretary of the CA Dept of Food and Ag, party Ann Veneman DISMISSED (cc: all counsel) (dd) [Entry date 02/08/99] [2:97cv1179 2:97cv1185]

DATE	#	DOCKET ENTRY
4/12/99	134	JOINT NOTICE OF MOTION AND JOINT MOTION for summary judgment by plaintiffs in 2:97-cv-01185 and 2:97-cv-012179 motion TO BE HEARD by Judge Garland E. Burrell; motion Hearing Set For 9:00 5/10/99 (dd) [Entry date 04/13/99] [2:97cv1179 2:97cv1185]
4/12/99	150	NOTICE OF MOTION AND MOTION for summary judgment by defendants motion TO BE HEARD by Judge Garland E. Burrell; Motion Hearing Set For 9:00 5/10/99 (dd) [Entry date 04/13/99] [2:97cv1179]
7/22/99	209	ORDER by Judge Garland E. Burrell ORDERING motion for summary judgment by defendants in 2:97-cv-01179 [150-1] and 2:97-cv-01185 [76-1] GRANTED; the Clerk to enter judgment in favor of dft and against pltfs; CASE DISMISSED (cc: all counsel) (dd) [Entry date 07/22/99] [2:97cv1179 2:97cv1185]
8/3/99	210	JUDGMENT entered in favor of dft pursuant to court order issued 7/22/99 by Judge Garland E. Burrell (cc: all counsel) (dd) [Entry date 08/03/99] [2:97cv1179 2:97cv1185]

DATE	#	DOCKET ENTRY
8/12/99	211	NOTICE OF APPEAL by plaintiffs from District Court decision re judgment [210-1] in 2:97-cv-01179 and judgment [172-1] in 2:97-cv-01185 (fee status paid-#193758) (dd) [Entry date 08/13/99] [2:97cv1179 2:97cv1185]
8/23/99	216	NOTICE OF APPEAL by plaintiffs Hillside Dairy, A&A Dairy, L&S Dairy and Milky Way Farms in 2:97-cv-01179 from District Court decision re judgment [210-1] [172-1] (fee status paid) (dd) [Entry date 08/24/99] [2:97cv1179 2:97cv1185]
10/3/01	242	CERTIFIED COPY of judgment from 9th Circuit the decision of the District Court [236-1] is AFFIRMED (cc: all counsel) (kdc) [Entry date 10/05/01] [2:97cv1179]

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

97-CV-1185

PONDEROSA DAIRY, ET AL
v.
VENEMAN, ET AL

RELEVANT DOCKET ENTRIES

DATE	#	DOCKET ENTRY
6/26/97	1	COMPLAINT for declaratory and injunctive relief, fee status paid, receipt # 179435, assigned to Honorable Lawrence K. Karlton; referred to Magistrate Judge Gregory G. Hollows (mc) [Entry date 06/27/97] [2:97cv1185]
6/27/97	4	NOTICE OF MOTION AND MOTION for preliminary injunction by plaintiff Ponderosa Dairy motion TO BE HEARD by Honorable Lawrence K Karlton; Motion Hearing Set for 8/4/97 at 9:00am (dmb) [Entry date 06/30/97] [2:97cv1185]

DATE	#	DOCKET ENTRY
7/21/97	18	BRIEF IN OPPOSITION (RESPONSE) by dfts Ann M Veneman, A J Yates to motion for preliminary injunction by plaintiff Ponderosa Dairy [4-1] (bb) [Entry date 07/22/97] [2:97cv1185]
7/25/97	23	RELATED CASE ORDER by Judge Garland E. Burrell ORDERING related case(s) 2:97cv1179 with member of case 2:97cv1185 reassigned to Judge Garland E. Burrell; motion for preliminary injunction by plaintiff Ponderosa Dairy TO BE HEARD by Judge Garland E. Burrell; Case 2:97cv1185 referred to Magistrate Judge John F. Moulds; Clerk to make appropriate adjustment in the assignment of civil caes to compensate for this reassignment (cc: all counsel) (ndd) [Entry date 07/25/97] [2:97cv1185]

DATE	#	DOCKET ENTRY
8/12/97	35	ORDER by Judge Garland E. Burrell ORDERING pltfs Ponderosa Dairy's reply to dfts' opposition to motion for preliminary injunction, file 7/28/97, the order striking the document is VACATED [31-1], [29-1]; pltfs' motion for preliminary injunction relief is GRANTED in part and DENIED in part; [4-1], [5-1] (cc: all counsel) (ljr) [Entry date 08/12/97] [2:97cv1179 2:97cv1185]
8/15/97	38	NOTICE OF MOTION AND MOTION to dismiss by dfts Ann M Veneman in 2:97-cv-01185, A J Yates in 2:97-cv-01185 ; Motion Hearing Set For (bb) [Entry date 08/18/97] [2:97cv1185]
3/31/98	52	AMENDED COMPLAINT [1-1] by plaintiffs (dmb) [Entry date 04/03/98] [2:97cv1185]
4/16/98	54	NOTICE OF MOTION AND MOTION to dismiss amended complaint by defendant in 2:97-cv-01185 Motion Hearing Set for 5/18/98 at 9:00am (chl) [Entry date 04/17/98] [2:97cv1185]

DATE	#	DOCKET ENTRY
8/3/98	66	ORDER by Judge Garland E. Burrell ORDERING motion to dismiss amended complaint by defendant [73-1] GRANTED in 2:97-cv-01179: Plaintiff is granted 20 days to file and serve a second amended complaint (cc: all counsel) (gm) [Entry date 08/03/98] [2:97cv1179 2:97cv1185]
12/7/98	76	MOTION for summary judgment by defendant Ann M Veneman in 2:97-cv-01185 motion TO BE HEARD by Judge Garland E. Burrell ; Motion Hearing Set For 1/19/99 at 9:00 (supporting documents filed under seal) (gm) [Entry date 12/08/98] [2:97cv1185]
2/8/99	95	STIPULATION AND ORDER by Judge Garland E. Burrell: dft William J Lyons Jr substituted as Secretary of the CA Dept of Food and Ag, party Ann Veneman DISMISSED (cc: all counsel) (dd) [Entry date 02/08/99] [2:97cv1179 2:97cv1185]

DATE	#	DOCKET ENTRY
4/12/99	111	JOINT NOTICE OF MOTION AND JOINT MOTION for summary judgment by plaintiffs in 2:97-cv-01185 and 2:97-cv-012179 motion TO BE HEARD by Judge Garland E. Burrell; motion Hearing Set For 9:00 5/10/99 (dd) [Entry date 04/13/99] [2:97cv1179 2:97cv1185]
4/12/99	130	NOTICE OF MOTION AND MOTION for summary judgment by defendants motion TO BE HEARD by Judge Garland E. Burrell, Motion Hearing Set For 9:00 5/10/99 (dd) [Entry date 04/13/99] [2:97cv1185]
7/22/99	171	ORDER by Judge Garland E. Burrell ORDERING motion for summary judgment by defendants in 2:97-cv-01179 [150-1] and 2:97-cv-01185 [76-1] GRANTED; the Clerk to enter judgment in favor of dft and against pltfs; CASE DISMISSED (cc: all counsel) (dd) [Entry date 07/22/99] [2:97cv1179 2:97cv1185]
8/3/99	172	JUDGMENT entered in favor of dft pursuant to court order issued 7/22/99 by Judge Garland E. Burrell (cc: all counsel) (dd) [Entry date 08/03/99] [2:97cv1179 2:97cv1185]

DATE	#	DOCKET ENTRY
8/12/99	173	NOTICE OF APPEAL by plaintiffs from District Court decision re judgment [210-1] in 2:97-cv-01179 and judgment [172-1] in 2:97-cv-01185 (fee status paid-#193758) (dd) [Entry date 08/13/99] [2:97cv1179 2:97cv1185]
8/23/99	178	NOTICE OF APPEAL by plaintiffs Hillside Dairy, A&A Dairy, L&S Dairy and Milky Way Farms in 2:97-cv-01179 from District Court decision re judgment [210-1] [172-1] (fee status paid) (dd) [Entry date 08/24/99] [2:97cv1179 2:97cv1185]
10/5/01	199	CERTIFIED COPY of judgment from 9th Circuit AFFIRMING the decision of the District Court (cc: all counsel) (kdc) [Entry date 10/05/01] [2:97cv1185]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 99-16981

PONDEROSA DAIRY, ET AL
v.
YATES, ET AL, ET AL

Appeal from: Eastern District of
California (Sacramento)

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
5/15/01	ARGUED AND SUBMITTED TO Joseph T. SNEED, Barry G. SILVERMAN, John W. Sedwick [99-16981, 99-16982] (sm) [99-16981 99-16982]
8/9/01	FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Joseph T. SNEED; Barry G. SILVERMAN; John W. Sedwick, author) FILED AND ENTERED JUDGMENT [99-16981, 99-16982] (jr) [99-16981 99-16982]

9/24/01	Filed order (Joseph T. SNEED, Barry G. SILVERMAN & John W. Sedwick).....The petition for rehearing and the peition for rehearing enbanc are denied. [4240210-1] in 99-16981, 99-16982 [99-16981, 99-16982] (jr) [99-16981 99-16982]
10/2/01	MANDATE ISSUED [99-16981, 99-16982] (jr) [99-16981 99-16982]
1/18/02	Rec'd ntc from Supreme Court; petition for certiorari filed. Supreme Court No. 01-1018. Filed on 12/26/01 & on dkt 1/11/02. [99-16981, 99-16982] (jr) [99-16981 99-16982]

UNITED STATES COURT OF APPEALS
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1/18/02	Rec'd ntc from Supreme Court; petition for certiorari filed. Supreme Court No. 01-1018. Filed on 12/26/01 & on dkt 1/11/02. [99-16981, 99-16982] (jr) [99-16981 99-16982]

STATUTORY PROVISIONS

Section 143 of the Federal Agricultural Improvement and Reform Act of 1996 (1996 Farm Bill), Pub. L. No. 104-127, 110 Stat. 888, 915-917 (codified at 7 U.S.C. §§ 7253), provides:

SEC. 143. CONSOLIDATION AND REFORM OF FEDERAL MILK MARKETING ORDERS.

(a) AMENDMENT OF ORDERS—

(1) REQUIRED CONSOLIDATION.—The Secretary shall amend Federal milk marketing orders issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, to limit the number of Federal milk marketing orders to not less than 10 and not more than 14 orders.

(2) INCLUSION OF CALIFORNIA AS SEPARATE ORDER.—Upon the petition and approval of California dairy producers in the manner provided in section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, the Secretary shall designate the State of California as a separate Federal milk marketing order. The order covering California shall have the right to reblend and distribute order receipts to recognize quota value.

(3) RELATED ISSUES ADDRESSED IN CONSOLIDATION.—Among the issues the Secretary is authorized to implement as part of the consolidation of Federal milk marketing orders are the following:

(A) The use of utilization rates and multiple basing points for the pricing of fluid milk.

(B) The use of uniform multiple component pricing when developing 1 or more basic formula prices for manufacturing milk.

(4) EFFECT OF EXISTING LAW.—In implementing the consolidation of Federal milk marketing orders and related reforms under this subsection, the Secretary may not consider, or base any decision on, the table contained in section 8c(5)(A) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)(A)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, as added by section 131 of the Food Security Act of 1985.

(b) EXPEDITED PROCESS.—

(1) USE OF INFORMAL RULEMAKING.—To implement the consolidation of Federal milk marketing orders and related reforms under subsection (a), the Secretary shall use the notice and comment procedures provided in section 553 of title 5, United States Code.

(2) TIME LIMITATIONS.—

(A) PROPOSED AMENDMENTS.—The Secretary shall announce the proposed amendments to be made under subsection (a) not later than 2 years after the date of enactment of this title.

(B) FINAL AMENDMENTS.—The Secretary shall implement the amendments not later than 3 years after the date of enactment of this title.

(3) EFFECT OF COURT ORDER.—The actions authorized by this subsection are intended to ensure the timely publication and implementation of new and amended Federal milk marketing orders. In the event that the Secretary is enjoined or otherwise restrained by a court order from publishing or implementing the consolidation and related reforms under subsection (a), the length of time for which that injunction or other restraining order is effective shall be added to the time limitations specified in paragraph (2) thereby extending those time limitations by a period of time equal to the period of time for which the injunction or other restraining order is effective.

(c) FAILURE TO TIMELY CONSOLIDATE ORDERS.—If the Secretary fails to implement the consolidation required under subsection (a)(1) within the time period required under subsection (b)(2)(B) (plus any additional period provided under subsection (b)(3)), the Secretary may not assess or collect assessments from milk producers or handlers under such section 8c for marketing order administration and services provided under such section after the end of that period until the consolidation is completed. The Secretary may not reduce the level of services provided under the section on account of the prohibition against assessments, but shall rather cover the cost of marketing order administration and services through funds available for the Agricultural Marketing Service of the Department.

(d) REPORT REGARDING FURTHER REFORMS.—

(1) REPORT REQUIRED.—Not later than April 1, 1997, the Secretary shall submit to Congress a report—

(A) reviewing the Federal milk marketing order system established pursuant to section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c),

reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, in light of the reforms required by subsection (a);

(B) describing the efforts underway and the progress made in implementing the reforms required by subsection (a); and

(c) containing such recommendations as the Secretary considers appropriate for further improvements and reforms to the Federal milk marketing order system.

(2) EFFECT OF OTHER LAWS.—Any limitation imposed by Act of Congress on the conduct or completion of reports to Congress shall not apply to the report required under this section, unless the limitation specifically refers to this section.

Section 144 of the Federal Agricultural Improvement and Reform Act of 1996 (1996 Farm Bill), Pub. L. No. 104-127, 110 Stat. 888, 917 (codified at 7 U.S.C. §§ 7254), provides:

SEC. 144. EFFECT ON FLUID MILK STANDARDS IN STATE OF CALIFORNIA.

Nothing in this Act or any other provision of law shall be construed to preempt, prohibit, or otherwise limit the authority of the State of California, directly or indirectly, to establish or continue to effect any law, regulation, or requirement regarding—

(1) the percentage of milk solids or solids not fat in fluid milk products sold at retail or marketed in the State of California; or

(2) the labeling of such fluid milk products with regard to milk solids or solids not fat.

Section 145 of the Federal Agricultural Improvement and Reform Act of 1996 (1996 Farm Bill), Pub. L. No. 104-127, 110 Stat. 888, 917-918 (codified at 7 U.S.C. §§ 7255), provides:

SEC. 145. MILK MANUFACTURING MARKETING ADJUSTMENT.

(a) MAXIMUM ALLOWANCES ESTABLISHED.—No State shall provide for a manufacturing allowance for the processing of milk in excess of—

(1) $1.65 per hundredweight of milk for milk manufactured into butter and nonfat dry milk; and

(2) $1.80 per hundredweight of milk for milk manufactured into cheese.

(b) MANUFACTURING ALLOWANCE DEFINED.—In this section, the term "manufacturing allowance" means—

(1) the amount by which the product price value of butter and nonfat dry milk manufactured from a hundred pounds of milk containing 3.5 pounds of butterfat and 8.7 pounds of milk solids not fat resulting from a State's yield and product price formulas exceeds the class price for the milk used to produce those products; or

(2) the amount by which the product price value of cheese manufactured from a hundred pounds of milk containing 3.5 pounds of butterfat and 8.7 pounds of milk solids not fat resulting from a State's yield and product price formulas exceeds the class price for the milk used to produce cheese.

(c) EFFECT OF VIOLATION.—If the Secretary determines following a hearing that a State has in effect a manufacturing allowance that exceeds the manufacturing allowance authorized in subsection (a), the Secretary shall suspend purchases of cheddar cheese, butter, and nonfat dry milk produced in that State until such time as the State complies with such subsection.

(d) EFFECTIVE DATE; IMPLEMENTATION.—This section (other than subsection (e)) shall be effective during the period beginning on the first day of the first month beginning after the date of enactment of this title and ending on December 31, 1999. During that period, the Secretary may exercise the authority provided to the Secretary under this section without regard to the issuance of regulations intended to carry out this section.

(e) CONFORMING REPEAL.—Effective on the first day of the first month beginning after the date of enactment of this title, section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1446e-1) is repealed.

Sections 61801-61802 of the California Food and Agriculture Code provide:

61801. The production of market milk is hereby declared to be a business affected with a public interest. The provisions of this chapter are enacted in the exercise of the police powers of this state for the purpose of protecting the health and welfare of the people of this state.

61802. The Legislature hereby declares all of the following:

(a) Market milk is a necessary article of food for human consumption.

(b) The production and maintenance of an adequate supply of healthful market milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare, and the production, transportation, processing, and storage of market milk in this state is an industry affecting the public health.

(c) Because of the perishable quality of milk, the nature of milk production, the varying seasonal production and demand factors, and other economic factors affecting the milk industry, the potential exists for economic disruption, in the absence of regulation, in the production, marketing, and sale of market milk which may constitute a menace to the health and welfare of the inhabitants of this state and may tend to undermine sanitary regulations and standards of content and purity, however effectually the sanitary regulations may be enforced.

(d) Health regulations alone are insufficient to prevent economic disturbances in the production of milk which may disrupt the future supply of market milk and to

safeguard the consuming public from future inadequacy of a supply of this necessary commodity.

(e) It is the policy of this state to promote, foster, and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including market milk, and to eliminate economic waste, destructive trade practices, and improper accounting for market milk purchased from producers.

(f) It is recognized by the Legislature that the economic factors concerning the production, marketing, and sale of market milk in California may be affected by the national market for milk for manufacturing purposes.

(g) It is recognized by the Legislature that in recent years the supply of manufacturing milk in California, as defined in Section 32509, has consistently declined and continues to decline, and that market milk has virtually supplanted manufacturing milk for manufacturing purposes in this state, and that it is therefore necessary to conform the pricing standards governing minimum producer prices for market milk established under this chapter to current economic conditions.

(h) It is recognized by the Legislature that the levels of retail prices of milk and milk products paid by consumers are affected by a large number of economic and other factors apart from minimum producer prices for market milk established under this chapter, many of which factors are not within the power of the director to regulate or control, particularly since the Legislature repealed provisions concerning establishment of minimum wholesale and retail prices. It is further recognized by the Legislature that, in order to accomplish the purposes of this chapter and to promote

the public health and welfare, it is essential to establish minimum producer prices at fair and reasonable levels so as to generate reasonable producer incomes that will promote the intelligent and orderly marketing of market milk in the various classes, and that minimum producer prices established under this chapter should not be unreasonably depressed because other factors have affected the levels of retail prices paid by consumers.

Sections 62077-62078 of the California Food and Agriculture Code provide:

62077. A handler shall not pay any producer less than the applicable price established for the usage to which the market milk, purchased from him is applied pursuant to accounting procedures established by the director. If the market milk is not applied to any purpose set forth in Article 5 (commencing with Section 61931), then a handler shall not pay any producer less than the lower of the prices established under the applicable stabilization and marketing plan for class 4a and class 4b usage.

62078. All handlers who receive market milk within this state shall be obligated to pay minimum producer prices established under this chapter regardless of the area of origin of such milk, whether inside or outside the jurisdiction of the State of California.

Sections 62700-62704 of the California Food and Agriculture Code provide:

62700. The production and distribution of fluid milk and fluid cream is hereby declared to be a business affected with a public interest. The provisions of this chapter are enacted in the exercise of the police powers of this state for the purpose of protecting the health and welfare of the people of this state.

62701. It is hereby declared that fluid milk and fluid cream are necessary articles of food for human consumption; that the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to public health and welfare, and that the production, transportation, processing, storage, distribution and sale of fluid milk and fluid cream in the State of California is an industry, in whole and in part, affecting public health and welfare; that unfair, unjust, destructive and demoralizing trade practices have appeared within this industry and these practices constitute a menace to the health and welfare of the inhabitants of this state by threatening the stability of this industry and by thereby endangering the assurance to the people of the State of California of the maintenance of an adequate supply of this necessary commodity; that it is a policy of this state to promote, foster and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including fluid milk and fluid cream, and to eliminate speculation, waste, improper marketing, unfair and destructive trade practices, and improper accounting for milk purchased from producers.

62702. It is recognized by the Legislature that currently the powers conferred upon the director by Chapter 2 (commencing with Section 61801) are inadequate to enable the dairy industry to develop and maintain satisfactory marketing conditions and bring about and maintain a reasonable amount of stability and prosperity in the production of fluid milk and fluid cream; and that to accomplish these purposes, and particularly to insure to consumers within California an adequate and continuous supply of pure, fresh, and wholesome milk at fair and reasonable prices, including a reasonable estimate of the additional supply which is needed to provide for normal fluctuations in production and in consumer demand for those products, those powers must be supplemented by the powers conferred in this chapter upon the director to equalize gradually the distribution of class 1 usage among the producers of this state.

62702.1. It is recognized by the Legislature that the provisions for equalization of usages among producers and entry of new producers contained in the Gonsalves Milk Pooling Act, as originally enacted, and the pooling plan adopted thereunder, tended to achieve the purposes of that act; however, the provisions for more rapid equalization and additional new entry would more rapidly and effectively achieve the purposes of this chapter.

It is also recognized that some holders of pool quota and production base initially issued under the Gonsalves Milk Pooling Act have waited for several years for equalization, and that equalized producers have for a number of years not shared in any of the benefits of new quota created by new usage.

It is further recognized that it is necessary to promote and to attempt to assure more rapid equalization of the holders of pool quota issued subsequent to the initial allocation of production bases and pool quota pursuant to this chapter, and to provide for a program for entry and for equalization of new producers.

It is the purpose of the amendments to this chapter to provide a reasonable and equitable mechanism to permit more accelerated equalization, to equalize the holders of pool quota and production base initially issued under the Gonsalves Milk Pooling Act and who are not yet equalized, and to legislatively allocate in a fair and reasonable manner a share of new pool quota created by new usage to existing pool quota holders who are not equalized, to new producers, and to equalized pool quota holders who have not shared in the benefits of the growth of new usage since the original enactment of the Gonsalves Milk Pooling Act and the pooling plan thereunder.

62703. In effectuating the purposes of this chapter, a production base and a pool quota shall be established for each producer pursuant to Section 62707. The establishing of these bases and their functions shall be as provided in the pooling plan formulated by the director pursuant to the provisions of this chapter.

62704. The director is authorized to develop a proposed pooling plan and to designate the proposed areas in which the plan will be made effective. He shall appoint fluid milk producers, and representatives of producers, to be the members and alternate members of a formulation committee, reasonably representative of all producers and areas to be included in the proposed pooling plan, which committee shall advise and assist the director in the establishment of the proposed pooling plan area and in the formulation of the proposed pooling plan. The pooling plan shall include all areas covered by stabilization and marketing plans under Chapter 2 (commencing with Section 61801), except any relatively isolated region of the state may be excluded therefrom, if the director, after a public hearing, finds that the inclusion of the region is not practical or in conformity with the purposes of the pooling plan, or if he finds that the producers in the relatively isolated region do not desire to be a part of either their own or one of the pools.

Section 62711 of the California Food and Agriculture Code provides:

62711. (a) Except as provided in subdivision (h) of Section 62707, each producer shall be paid the highest usage for that amount of his or her fluid milk production that is equal to his or her pool quota and shall be paid the next highest usage for the difference between his or her pool quota and his or her production base under the production pool designated pursuant to this chapter and the lowest usage for all milk produced in

excess of his or her production base under the overproduction pool designated pursuant to this chapter.

(b) In calculating the pool value, the volume of milk that has been classified as restricted use market milk shall be credited to the handler at the class 4a or class 4b price, whichever is lower.

Sections 62716-62717 of the California Food and Agriculture Code provide:

62716. Following the required hearing, the director shall submit the pooling plan to producers concerned for their approval or disapproval in a statewide referendum. The approval or disapproval of individual producers voting in this referendum shall be kept confidential. Each producer shall have one vote and such vote shall be individually cast so that there will be no block voting. The director shall prepare a ballot. The ballot form shall be substantially as follows:

Ballot

Shall the proposed pooling plan be made effective?

Yes ____ No ____

In addition, the ballot shall include a statement of the voter's total production during the calendar month next preceding the month of the commencement of the referendum period, where and to whom such production was sold or otherwise disposed, and the producer's name and address.

The director may reveal the names of producers whose votes have been received to both proponents and opponents of the plan.

The referendum shall be set for a period of 60 days. The director may at his own discretion or upon a proper showing, extend the referendum for a period not to exceed 30 days.

62717. If the director finds that producers on a statewide basis have assented in writing to the proposed pooling plan submitted to them for assent, the director shall place the proposed pooling plan into effect. The director shall find that producers have assented to the plan if he finds on a statewide basis that not less than 51 percent of the total number of eligible producers in the state shall have voted in the referendum and finds one of the following:

(a) Sixty-five percent or more of the total number of eligible producers who voted in the referendum who produced 51 percent or more of the total amount of fluid milk produced in the state during the calendar month next preceding the month of the commencement of the referendum period by all producers who voted in the referendum approve the plan.

(b) Fifty-one percent or more of the total number of eligible producers who voted in the referendum who produced 65 percent or more of the total amount of fluid milk produced in the state during the calendar month next preceding the month of the commencement of the referendum period by all producers who voted in the referendum, approve the plan.

If the plan is not approved, the director may resubmit the plan, or submit a new plan, at any time after six months from the date the director announces the plan was not approved.

The director may amend the plan, after notice and public hearing has been given in the same manner as is provided in Chapter 2 (commencing with Section 61801) for stabilization and marketing plans, if he finds that the amendment is necessary to effectuate the purposes of this chapter. After the hearing, the director, upon his own motion, may make nonsubstantive amendments to the plan. The director may make substantive amendments to the plan only if producers assent to the proposed amendments at a referendum conducted in the same manner and

in the same number as provided for the referendum approving the pooling plan.

The director may terminate the plan on a statewide basis after notice and public hearing has been given in the same manner as is provided in Chapter 2 (commencing with Section 61801) for stabilization and marketing plans, if he finds that the plan is no longer in conformity with the standards described in, or will not tend to effectuate the purposes of, this chapter. The hearing may be held upon the motion of the director, and shall be held upon receipt of a petition signed by producers representing not less than 25 percent of the total number of all producers and not less than 25 percent of the total production of all producers.

The director shall submit the termination of the plan on a statewide basis in a referendum conducted in the same manner as provided for initial approval of the plan if, after notice and public hearing has been given in the same manner as is provided in Chapter 2 (commencing with Section 61801) for stabilization and marketing plans, he finds that a substantial question exists as to whether or not producers desire the plan to continue and shall submit the plan for termination upon receipt of a petition requesting termination signed by producers representing not less than 25 percent of the total number of all producers and not less than 25 percent of the total production of all producers. The plan shall be terminated if termination is favored by the same percentage of producers producing the same amount of fluid milk as required to initiate the plan.

REGULATORY PROVISIONS

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

POOLING PLAN FOR MARKET MILK, AS AMENDED, EFFECTIVE JULY 1, 1997

Article 1. Definitions

Section 100. The definitions contained in Chapter 2 and Chapter 3, Part 3, Division 21 of the Food and Agricultural Code govern the construction of this Plan.

Section 101. "Act" shall be known and may be cited as the "Food and Agricultural Code".

Section 102. "Person" means any individual, firm, corporation, partnership, trust, incorporated or unincorporated association, nonprofit cooperative association, nonprofit cooperative marketing association, nonprofit corporation, or any other business unit or organization.

Section 103. "Secretary" means the Secretary of the California Department of Food and Agriculture or any employee of such department duly assigned or delegated to perform the functions required pursuant to this Plan.

Section 104. "Producer" means any person that produces market milk in the State of California from five or more cows.

Section 104.1 "Dairy ranch" and "dairy farm" are synonymous terms and mean a commercial production facility which produces milk.

Section 105. "Handler" means any person functioning in one or more of the following capacities:

(a) A person (other than a cooperative association) who operates one or more pool plants or operates any other plant from which Class 1 milk is disposed of during the month directly or indirectly in the pool area;

(b) A duly incorporated cooperative association of producers which has authority from its individual producer members to market their milk and receive payment therefore and which operates one or more pool plants or operates any other plant from which market milk products are disposed of directly or indirectly during the month in the pool area;

(c) A cooperative association in its capacity as the marketing agent for producer milk with respect to the milk of its member producers which it markets and receives payment therefore under authority of contracts or agreements with its individual members, which milk is not received at a plant operated by the cooperative or diverted therefrom;

(d) A person who operates a milk plant located in the pool area and receives market milk from one or more dairy ranches.

Section 106. "Pool plant" means:

(a) Any handler's milk receiving, processing, bottling, or manufacturing plant located in California from which Class 1 or mandatory Class 2 milk products are disposed of directly or indirectly in the pool area which receives market milk from one or more producers. Any handler with a pool plant qualified under this paragraph shall have the option to have any nonpool plant of that handler treated as either a "pool plant" or a "nonpool plant" for pool accounting purposes.

This option may only be made once in any 12-month period.

(b) Any handler's plant located in California which does not receive market milk from dairy farmers nor claim diversions of such milk, but which processes, packages, or manufactures milk or milk products or imitation milk, if Class 1 or mandatory Class 2 milk products are disposed of from such plant directly to retail or wholesale customers in the pool area. Any handler with a pool plant qualified under this paragraph shall have the option to have any nonpool plant of that handler treated as either a "pool plant" or a "nonpool plant" for pool accounting purposes. This option may only be made once in any 12-month period.

(c) The following plants shall not be deemed to be pool plants and for accounting and settlement purposes shall operate outside of the pool:

(1) The plant of an exempt producer-handler;

(2) The plant of any governmental agency, unless such plant notifies the secretary it has elected to participate in the Pooling Plan no later than 30 days after the effective date of the Plan or 30 days after said plant commences operations. Having been admitted to the pool pursuant to the request, the plant may not subsequently withdraw;

(3) A plant from which Class 1 or mandatory Class 2 milk products are disposed of to retail or wholesale outlets in areas outside the pool area, but not to retail or wholesale outlets (except milk

plants) in the pool area, nor to any pool plant having such dispositions;

(4) Any milk processing plant which is not approved by the appropriate public regulatory or health authority for the handling of market milk, provided that such plant receives no market milk except pool milk transferred or diverted by a handler and provided, further, that such plant notifies the secretary in advance that it chooses not to be a pool plant.

* * * * *

Section 115. "Quota milk" means that amount of fat and solids not fat contained in pool milk delivered by a producer during the month which is not in excess of the pool quota of such producer computed pursuant to Section 110 multiplied by the number of quota eligible days in the month.

Section 115.5 "Quota eligible days" means the number of calendar days in the month as reduced by the following:

(a) The number of days on which a producer (including producer members or patrons of cooperative associations) is degraded as defined in Section 113.3 in accordance with procedures established by an appropriate public regulatory or health authority;

(b) The number of days, on which the secretary agrees, a producer's milk did not meet the quality requirements specified in the producer's contract with the handler and such milk was not sold or used for Class 1 purposes and was otherwise handled in accordance with Section 62715 of the Food and Agricultural Code.

Section 116. "Daily production milk" or "daily base milk" means that amount of pool milk delivered by a producer during the month which is in excess of the pool quota computed pursuant to Section 110 of such producer but not in excess of the production base computed pursuant to Section 108.

Section 116.5 "Production milk" or "base milk" means that amount of pool milk delivered by a producer during the month which is equal to the monthly production base as computed pursuant to Section 108.5, less the amount of quota milk delivered during the month as computed pursuant to Section 115.

Section 117. "Overproduction milk" or "overbase milk" means that amount of pool milk delivered by a producer during the month, exclusive of milk degraded in accordance with procedures established by the appropriate public regulatory or health authority, which does not qualify as quota milk or base milk.

* * * * *

Article 2. Eligibility for a Production Base and Pool Quota

Section 200. The secretary shall compute and establish a production base and pool quota for each producer who produced market milk which was delivered to a plant regulated under one or more of the Stabilization and Marketing Plans effective in the pool area specified in Section 118, during any base period, subject to the following requirements:

(a) If a producer operated more than one dairy farm holding valid market milk permits during any base period, or during the months of December 1966 and January and February 1967 for producers whose production base is computed under Paragraph 108(c) a separate production base and pool quota shall be computed, for

deliveries from each such dairy farm. If such farms were not operated separately for the entire base period selected, they shall be combined for computing base and quota;

(b) Only one production base and one pool quota shall be computed for a single production unit which was jointly owned or operated by one or more persons during any base-forming period;

(c) Producers of certified milk or guaranteed raw milk who qualify under Section 104 shall have the option to be included in the Plan at the time of the adoption of the initial Pooling Plan, provided they so state in an application to the secretary submitted no later than the effective date of the Plan. Admission to the Pooling Plan at a later date by such producers shall be on the basis of the production base and pool quota computed according to the same procedure provided under Section 602, for producer-handlers;

(d) Any person who purchased or otherwise acquired a producer's business or a portion of a producer's business after June 30, 1966, and prior to the effective date of this Pooling Plan, shall succeed to the same proportion of the producer's production base and pool quota, provided that the same rules concerning eligibility for and computation of base and quota amounts shall apply to the business so transferred as though no change in ownership had occurred. For purposes of this paragraph, the term "business" shall be deemed to be the dairy herd and other physical facilities which made up the business transferred, or all or any portion of a market milk supply contract or

allotment which was purchased or otherwise acquired under conditions of continuing performance. The transaction by which the business was acquired shall be fully disclosed and documented on forms provided by and filed with the secretary. Any misrepresentation of facts or falsity in statements by either party shall constitute cause for forfeiture of all or any portion of the production base and pool quota under consideration as purchased or acquired. Any disagreement of the producer with the computation of a base and quota which involves this paragraph shall be referred to the Producer Review Board.

Article 3. Adjustment of Production Base and Pool Quota

Section 300. After August 31 of each year, and prior to January 1 of the following year, the secretary shall determine the actual new daily Class 1 and Class 2 usage of solids not fat for the pool area, if any, as follows:

(a) The Class 1 and Class 2 usage of solids not fat for the most recent September through August 12-month period shall be measured against the Class 1 and Class 2 usage of solids not fat for the previous highest identical 12-month period since the 1988-1989 measurement period;

(b) The Class 1 and Class 2 usage of solids not fat for each 12-month period shall take into consideration the total Class 1 and Class 2 usage generated by the pool, plus that amount which is exempted from pool accountability by producer-handlers operating with an exemption under the provisions of Article 6 or Article 6.5, and further adjusted by the amount of certified raw milk used for Class 1 and Class 2 purposes;

(c) If new Class 1 and Class 2 usage of solids not fat is to be assigned pursuant to this article, a ratio of 1 pound of fat to 2.5 pounds of solids not fat shall be used to determine the new Class 1 and Class 2 usage of fat.

Section 301. The total new Class 1 and Class 2 usage computed in accordance with Section 300, shall be allocated to producers as pool quota as follows:

(a) Forty percent of the new quota shall be available for allocation in accordance with the following provisions:

(1) A factor shall be computed based on the production base and pool quota in effect on December 1 for those producers who have not reached the equalization point, using one of the following methods:

(i) For those producers who meet the one-year production requirement pursuant to Section 352, and who received an initial allocation of quota and production base after December 20, 1976 under the provisions of Article 3.5, a factor equal to 75 percent of currently held production base increased by unissued qualifying period production plus the difference between the currently held production base increased by unissued qualifying period production and pool quota; or

(ii) For all other qualifying producers, a factor equal to 75 percent of the production base plus the difference between the production base and pool quota.

(2) Divide the factor obtained for each producer under Subparagraph 301(a)(1), by the total of the factors obtained for all producers under that Subparagraph;

(3) The result obtained from the computation under Subparagraph 301(a)(2) shall determine the percentage of new pool quota which is available for allocation to each producer. This amount as adjusted by Subparagraph 301(a)(4) shall be assigned to each producer, except that no allocation shall be made to any producer which will result in a pool quota exceeding the equalization point;

(4) If, after these computations, the pool quota of the milk fat or solids not fat component of any producer is less than the equalization point of such producer by no more than 3.5 or 8.5 pounds, respectively, both components shall be increased to the equalization point;

(5) The secretary shall not be obligated to reduce the new quota available for allocation computed pursuant to Paragraph 301(a) by the additional quota assigned pursuant to Subparagraph 301(a)(4), but shall reallocate one time only the residual quota occurring because of a producer reaching

equalization by the operation of Subparagraph 301(a)(3);

(6) Any new pool quota remaining to be assigned after all participating pool quotas have reached the equalization point shall be added to that available under Paragraph 301(b) for assignment.

(b) Forty percent of the new quota, increased by that made available under Subparagraph 301(a)(6) shall be allocated to producers whose total production base and pool quota are equal to or above the equalization point. Each such producer's allocation shall be in the same ratio as that producer's total holdings of quota bears to the total quota holdings of all such producers.

(c) There shall be no forfeiture of any pool quota, including that assigned pursuant to this article, except as provided under Article 5.

Section 302. Producers who qualify under Article 3.5 for participation in new pool quota pursuant to Paragraph 301(a) shall receive additional production base at the lesser of 111 percent of the additional pool quota allocated or their unissued qualifying period production. Producers reaching equalization under this provision will receive additional production base equaling unissued qualifying period production. A producer who qualifies under Article 3.5, will be considered to have reached equalization when quota is equal to or greater than 95 percent of the sum of currently held production base and unissued qualifying period production.

Article 3.5. Allocation of New Producer's Production Base and Pool Quota

Section 350. Twenty percent of total new Class 1 and Class 2 usage computed in accordance with Section 300 shall be available for initial quota allocations to new producers as

defined in Article 4.5. Such allocations shall be made available as of February 1 of each year to new producers who qualify under Article 4.5. This amount shall be added to any previous amount made available pursuant to this section and not allocated.

In addition, any quota which has reverted to the pool, under the provisions of Article 5 shall be allocated on a continuing basis to qualifying new producers. This quota will be accumulated until such time as there is sufficient quota to issue to the next new producer on the priority list under the provisions of Sections 351 and 453. Such quota shall be made available for allocation within 90 days after the quota has reverted to the pool.

Section 351. The new producer's initial allocation shall be:

(a) Pool quota at the lesser of:

(1) 95 percent of the qualifying period production as defined in Section 127, or

(2) An amount determined by multiplying a factor times 150 pounds of fat and 375 pounds of solids not fat. The factor to be used shall be the larger of:

(i) 40 percent;

(ii) The lowest factor obtained by dividing the pool quota solids not fat of each producer who receives an allocation pursuant to Article 3 by that producer's production base of solids not fat.

(b) Production base at the lesser of:

(1) The qualifying period production as defined in Section 127, or

(2) 111 percent of the pool quota allocated.

Section 352. Producers who received an initial allocation under Section 351 shall participate in future allocations under Sections 301 and 302 after a one-year minimum period of continuous production following initial allocation.

Section 353. Any pool quota received pursuant to Sections 351 and 352 shall be subject to the provisions of Article 5.

Section 354. No allocation shall be made to any producer which will result in a pool quota exceeding the equalization point.

Article 4.5. New Producer Entry

Section 450. A new producer, as defined under Section 120, and who qualifies under this article, may make application to the secretary on forms provided to establish eligibility for an allocation of quota. Quota, if available, will be allocated within 90 days following the receipt of the application.

Section 451. To qualify for allocation of new quota, a new producer must:

(a) Obtain a market milk permit from the appropriate California regulatory or health authority prior to making application, and

(b) Have a market milk contract and be shipping to a pool handler prior to making application, and

(c) Have one year of continuous commercial production within the State of California prior to making application, and maintain continuous market milk production until receiving an allocation of new quota, and

(d) Satisfy the requirement that at least 50 percent of the interest in the dairy operation is owned by individuals directly engaged in the management and operation of the dairy, and

(e) Operate a production facility that is completely separate and apart from any other production facility for a minimum of one year prior to making application and until new quota has been allocated, and

(f) Satisfy the requirement that no individual or person may apply for new quota on more than one production facility, and

(g) Operate a production facility under the same ownership percentages as stated in the application for a minimum of one year prior to making application and until new quota has been allocated.

* * * * *

Article 8.1. Adjustment to Handler Obligations for Plant to Plant Transfers

Section 810. Each handler entitled to adjustments for plant to plant transfers, who is located within a supply county, as set forth in Section 300.2 of the Stabilization and Marketing Plans, shall submit a report for each month which shall be postmarked no later than 45 days following the end of the month. Such report shall set forth adjustments to the handler's pool obligation as specified in this article.

Section 811. The following shall be shown for transfers for which a transportation credit is provided for under Section 300.2 of the Stabilization and Marketing Plans:

(a) The pounds and milk fat content of market milk, market skim milk, and market cream transferred in bulk form to each plant located in a county designated as a deficit county under Section 300.2 of the Stabilization and Marketing Plans

and the classification assigned under the provisions of Sections 802 and 812 of the Pooling Plan for Market Milk;

(b) The computation of the transportation credit for market milk and market skim milk (excluding condensed skim milk and market cream) based on the rates in Section 300.2 of the Stabilization and Marketing Plans.

Section 812. Handlers who transfer market milk and market skim milk (excluding condensed skim and market cream) in bulk form from a pool plant located in a county designated as a supply county to another pool plant located in a county designated as a deficit county, as set forth in Section 300.2 of the Stabilization and Marketing Plans, shall be entitled to request the following adjustments provided there is concurrence by the receiving plant:

(a) Market milk and market skim milk (excluding condensed skim milk and market cream) may be reassigned from the original classification, as provided for in Subparagraph 802(a)(3), to Class 1 provided that the total quantity assigned to Class 1 shall not exceed the total Class 1 inplant usage of the receiving plant;

(1) The additional quantity classified as Class 1 shall be deducted on a pro rata basis from the original Class 2, 3, 4a, and 4b classification. The shipping handler will be charged for Class 1 and credited for Class 2, 3, 4a, and 4b at the shipping handler's market area prices. The receiving handler will be credited for Class 1 and charged for Class 2, 3, 4a, and 4b at the receiving handler's market area prices.

(b) The provisions of this section shall only apply to transfers made during the months of September through the following February.

Section 813.The following shall be shown for transfers for which a credit is requested under Section 812:

(a) The original classification and value assigned to market milk, market skim milk, and market cream transferred in bulk form and the reassigned classification of market milk and skim milk (excluding condensed skim milk and market cream);

(b) The computed value of the original and revised classifications at both the shipping and receiving handler market area prices;

(c) The net adjustment to the pool obligation of both the shipping and receiving handler.

Section 814. The secretary shall verify and correct, if necessary, the adjustments requested under this article and adjust the handler obligation accounts within 60 days after receiving the handler report. The handler adjustments shall be reflected in the fat and solids not fat prices by adjustment of the net pool balance utilized pursuant to Paragraph 902(c) or Section 906, whichever is applicable.

Article 9. Computation of Handler Obligation and Quota, Base, and Overbase Pool Prices

Section 900. The gross pool obligation of each handler for each of the plants or for a cooperative association acting as a handler under Paragraph 105(c) shall be computed as follows:

(a) Multiply the quantities for each class as determined under Sections 801, 802 and 803 for each plant by the appropriate price announced

for such class by the secretary, f.o.b. such handler's plant or the pool or nonpool plant to which diverted;

(b) Multiply the quantities for each class as determined under Sections 801, 802 and 803 for each cooperative association acting as a handler under Paragraph 105(c) by the appropriate price announced for such class by the secretary, f.o.b. the pool or nonpool plant where the milk was first received from producers;

(c) Deduct an amount computed by multiplying the pounds of solids not fat or the skim milk equivalent of condensed skim milk used in fortifying Class 1 products by the appropriate charge allowable for condensing or drying of market skim pursuant to the applicable Stabilization and Marketing Plan.

(d) Deduct from the amounts calculated above, a credit to the handler's obligation for milk received from other sources not included in receipts deducted in Section 802 which shall be determined as follows:

(1) The value based on the receiving plant's inplant usage as defined in Section 130 or the value based on the current month's quota fat price for the milk fat component and the current month's quota solids not fat price plus the pool price modification rate for the value of the solids not fat component, whichever is less.

(2) The value based on subparagraph (d)(1) of this Section or the value based on the current month's overbase fat price for the milk fat component and the current month's overbase solids not fat price plus the pool price

modification rate for the value of the solids not fat component, whichever is greater.

Section 901. The total pounds of milk in each class and the pool value thereof shall be computed by the secretary as follows:

(a) (1) Determine the net total pounds of Class 1 milk remaining under Paragraph 803(m) for all handlers and combine into one total sum the obligations of all handlers for such Class 1 milk;

(2) Subtract the net sum of all adjustments computed pursuant to Paragraphs 900(c) which represent modifications in the actual obligation of all handlers for Class 1 milk.

(b) Make similar determinations of the net total pounds and value of each of the other classes of utilization for all handlers;

(c) For those months in which the secretary has implemented the collection of security charges provided for in Chapter 2.5, Part 3, Division 21 of the Food and Agricultural Code, adjust the values of each class as determined under Paragraphs 901(a) and 901(b) by:

(1) Multiplying the total pounds in each class by the rate established in Section 62561 of the Food and Agricultural Code; and

(2) Deducting from the total value of each appropriate class, the amounts calculated under Subparagraph (1). The resulting value for each class shall be utilized in computing the prices under Sections 902, 903 and 904 or 906.

Section 901.5 For those months in which the secretary has implemented a temporary increase in the minimum prices of milk pursuant to Section 62062.2 of the Food and Agricultural Code, adjust the values of each class as determined under Paragraphs 901(a) and (b) by:

(a) Multiplying the total pounds in each class by the temporary price increase for such class as set forth in Section 300.0 of the Stabilization and Marketing Plans. The funds generated shall form a subpool to be distributed equally to all milk production in the pool;

(b) Deducting from the total value of each appropriate class, the amounts calculated under Paragraph (a), hereof. The resulting value for each class shall be utilized in computing the initial prices under Sections 902, 903 and 904.

Section 902. This section is not in effect as long as Section 62750 of the Food and Agricultural Code is in effect. No later than the 24th day of each month, the secretary shall compute and announce the quota price for the fat and solids not fat components of quota milk received from producers during the preceding month, in accordance with the following procedures:

(a) Compute the total value of the quota pool and the total value for other source milk by assigning thereto the value or a proportionate share of the total value of the milk fat and solids not fat usages necessary to reflect the total pounds of pool milk which qualified as quota fat and quota solids not fat for all producers, and the total pounds of fat and solids not fat other source milk, excluding the quota fat and quota solids not fat of producer-handlers which was assigned under Paragraph 803(a). The computation of Class 1 solids not fat shall include the value of

the fluid component which is contained in the Class 1 skim usage. The values shall be assigned in the following sequence: Class 1, Class 2, Class 3, and then the higher of Class 4a or Class 4b (based on hundredweight value computed at 3.5 percent butterfat and 8.7 percent solids not fat);

(b) Add an amount for each component to the value as necessary to reflect the total amount of regional quota adjusters computed pursuant to Article 9.1;

(c) Add not less than half of the amount on hand in the net pool balance for the respective component of milk;

(d) Subtract from each component the value a figure equal to not more than one percent of the resulting balance, plus or minus any amount necessary to eliminate any fractional amounts of less than one-tenth cent per pound in the price of quota fat and solids not fat;

(e) Divide the resulting sums by the pounds of the components of quota milk plus the pounds of the components of other source milk computed under Paragraph 902(a). The resulting figure shall be the quota pool price for such components.

Section 903. This section is not in effect as long as Section 62750 of the Food and Agricultural Code is in effect. No later than the 24th day of each month, the secretary shall compute and announce the base price for the fat and solids not fat components of base milk received from producers during the preceding month, in accordance with the following procedures:

(a) Combine the values computed pursuant to Paragraphs 902(a), and 904(a);

(b) Subtract the total amount obtained under Paragraph (a), hereof, and any security charges calculated under Paragraph 901(c) from the gross pool obligation of all handlers as computed under Section 900(a), (b) and (c);

(c) Divide the remaining value of the milk fat and solids not fat portions of pool milk by the pounds of milk fat and solids not fat, respectively, contained in base milk and round the resulting figure for milk fat and for solids not fat to the nearest one-tenth cent. The prices so computed shall be the base pool prices.

Section 904. This section is not in effect as long as Section 62750 of the Food and Agricultural Code is in effect. No later than the 24th day of each month, the secretary shall compute and announce the overbase price for the fat and solids not fat components of overbase milk received from producers during the preceding month, in accordance with the following procedures:

(a) Compute the total value of the overbase pool by assigning thereto the total value or a proportionate share of the total value of the fat and solids not fat components of Class 4a and Class 4b beginning with Class 4a or Class 4b milk, whichever has the lower hundredweight value computed at a 3.5 percent butterfat and 8.7 percent solids not fat basis, as necessary to reflect the total pounds of pool milk which qualified as overbase fat and solids not fat;

(b) Divide the values obtained pursuant to Paragraph (a) of this section by the pounds of fat and solids not fat, respectively, in overbase milk and round the resulting figure for milk fat and

for solids not fat to the nearest one-tenth cent. The prices so computed shall be the overbase pool prices.

Section 905. For those months in which the secretary has implemented a temporary increase in the minimum prices of milk pursuant to Section 62062.2 of the Food and Agricultural Code, distribute the subpool funds generated pursuant to Paragraph 901.5(a) by:

(a) Dividing the total value of the temporary price increase for each component of milk by the total pounds of that component which was produced and received from producers participating in the pool during the preceding month to determine the value per pound; and

(b) Adding this value per pound adjustment to the initial quota, base and overbase prices computed under Sections 902, 903 and 904. These prices so adjusted shall be the quota, base and overbase pool prices announced for that month by the secretary.

Section 906. This section applies as long as Section 62750 of the Food and Agricultural Code is in effect. No later than the 24th day of each month, the secretary shall compute and announce the prices for the fat and solids not fat components of quota and nonquota milk received from producers during the preceding month, in accordance with the following procedures:

(a) Compute the total value of pool milk by assigning thereto the total values of the milk fat and solids not fat usages, except the fat and solids not fat exemption of producer-handlers which was assigned under Paragraph 803(a). The total value of pool milk shall include the value of usage for other source milk. The computation of Class 1 solids not fat shall

include the value of the fluid component which is contained in the Class 1 skim usage;

(b) The total value of the quota premium pool shall be the sum of the following computations:

(1) Multiply the total solids not fat quota pounds by $0.195 and subtract the total amount of regional quota adjusters, computed pursuant to Article 9.1;

(2) Multiply the total solids not fat of other source milk by $0.195.

(c) Adjust the total fat value, calculated in Paragraph 906(a), by:

(1) Subtracting the fat value of the plant to plant transportation adjustments, calculated pursuant to Article 8.1;

(2) Adding not less than half of the amount on hand in the net pool balance for fat;

(3) Subtracting from the fat value a figure equal to not more than one percent of the resulting balance, plus or minus any amount necessary to eliminate any fractional amounts of less than one-tenth cent per pound.

(d) Divide the adjusted total fat value, as calculated in Paragraph 906(c), by the total quota and nonquota fat pounds plus the total fat pounds of other source milk to determine the quota and nonquota fat prices;

(e) Compute the adjusted solids not fat value from the solids not fat value, calculated in Paragraph 906(a) by:

(1) Subtracting the solids not fat value of the plant to plant transportation adjustments, calculated pursuant to Article 8.1;

(2) Subtracting the total transportation allowance, calculated pursuant to Article 9.2;

(3) Adding not less than half of the amount on hand in the net pool balance for solids not fat;

(4) Subtracting a figure equal to not more than one percent of the resulting balance, plus or minus any amount necessary to eliminate any fractional amounts of less than one-tenth cent per pound;

(5) Subtracting the quota premium pool value from the total solids not fat value, calculated pursuant to Paragraph 906(b).

(f) Divide the adjusted solids not fat value as calculated in Paragraph 906 (e), by the total quota and nonquota solids not fat pounds plus the total solids not fat pounds of other source milk, to determine the nonquota solids not fat price;

(g) Add $0.195 per pound to the solids not fat price calculated in Paragraph 906(f) to determine the quota solids not fat price.

Article 9.1. Regional Quota Adjuster

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Section 920. Each producer shall be subject to the provisions of this article and shall, where applicable, participate in the transportation allowances set forth in Paragraph 921.2 and transportation sub-pools, when Section 925 is in effect.

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Article 10. Reports and Payments to Producers and Equalization of Returns

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Section 1001. Each handler other than those defined in Paragraphs 105(b) and (c) shall pay individual producers from whom milk is received directly at the pool plant or diverted by such handler to pool and nonpool plants at no less than the rates specified and no later than the dates indicated:

(a) On or before the 15th day of the month, each handler shall pay each producer the approximate net value for milk received or diverted during the last half of the preceding month based on the quota, base, and overbase prices announced for the month before the milk was received or diverted;

(b) On or before the last day of the month, each handler shall make final payment to each producer for the total value of milk received or diverted during the preceding month, excluding

pool milk received by nonpool plants as a direct purchase from individual producers, at not less than the rates specified below subject to adjustments, where applicable for transportation allowances and transportation charges specified in Article 9.2, and subject to deductions for advance payments made under this paragraph and Paragraph (a), hereof, for applicable charges for hauling the milk from ranch to plant and for assignments or other proper charges authorized in writing by the producer or required under Chapters 1, 2, and 3 of the Food and Agricultural Code, plus a payment for the approximate value of the milk based on the quota, base, and overbase prices for the preceding month for milk received or diverted during the first 15 days of the month:

(1) Quota milk delivered during the preceding month shall be paid for at the quota price announced by the secretary in accordance with Section 902, as adjusted for the regional quota adjuster pursuant to Article 9.1;

(2) Base milk delivered during the preceding month shall be paid for at the base price announced by the secretary in accordance with Section 903;

(3) Overbase milk delivered during the preceding month shall be paid for at the overbase price announced by the secretary in accordance with Section 904.

(c) Any handler qualified pursuant to Paragraph 105(a) who receives milk, skim milk, or cream at its pool plant(s) from handlers, as defined

pursuant to Paragraphs 105(b) and (c), shall pay such handlers no less than the applicable minimum class prices for such milk, skim milk, or cream no later than the dates specified:

(1) For milk received during the first 15 days of the month on or before the 28th day of such month based on the appropriate class prices, provided the class price announced for the preceding month shall be used for any class for which the current month's price has not yet been announced by the secretary;

(2) For milk received during the period from the 16th to the end of the month on or before the 13th day of the following month at no less than the appropriate class prices subject to any adjustment necessary due to overpayments or underpayments resulting from the use of tentative prices under Subparagraph (1), hereof.

(d) Each handler operating a nonpool plant as defined in Section 111 that receives market milk as a direct purchase from producers or from handlers defined pursuant to Paragraphs 105(b) and ©) shall pay for such milk at no less than the classified prices established by the Stabilization and Marketing Plans. The total combined inplant and derived usage of the nonpool plant shall be allocated among all producers each month.

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Section 1003. Each handler shall make payment to the secretary on or before the second day after receiving notice of

any amount due pursuant to this section of the amount computed as follows:

(a) The secretary shall compute the total of the amounts due from such handler to individual producers at the rates specified in Subparagraphs 1001(b)(1), (2), and (3), as adjusted for regional quota adjusters and transportation allowances, pursuant to Articles 9.1 and 9.2, and transportation sub-pool charges, if in effect;

(b) Subtract the sum computed pursuant to Paragraph (a), hereof, from the gross pool obligation of such handler computed pursuant to Section 900, if such pool obligation is larger than the amount owed to producers. The resulting figure shall be known as the handler's net pool obligation;

(c) In the event any handler fails to pay to the secretary, the net financial obligation to the pool resulting from its operation on or before the 15th day of the second month following the month for which the obligation was incurred, the secretary may add to such unpaid balance interest at the rate of 1 percent (1%) per month computed from the first day of the second month following the month for which the obligation was incurred until such obligation is paid. Such obligation shall be reduced by the following:

(1) Payments received on or before the 15th of the month; and

(2) Any credits resulting from adjustments to previous obligations.

The interest charged under this section shall be added to the milk fat and solids not fat Producer Equalization Funds on a 1 to 2.5 ratio, respec-

tively. The handler shall not be entitled to pass such interest charge on to the producers.

(d) Except as provided in Paragraphs (e) and (f) of this section, the obligation of any handler to pay money required to be paid pursuant to this section shall terminate two years after the last day of the month during which the secretary receives the handler's report of receipts and utilization and disposition of which such obligation is based, unless within such two-year period the secretary notifies the handler in writing that such money is due and payable. Written notice shall be complete upon mailing to the handler's last known address the following information:

(1) The amount of the obligation;

(2) The month on which the obligation is based; and

(3) The account for which it is to be paid.

(e) If a handler fails or refuses to make available to the secretary all records required under this Plan, the secretary may notify the handler in writing as provided in Paragraph 1003(d), of such failure or refusal. If the secretary so notifies the handler, the two-year period in respect to such obligation shall not begin to run until the first day of the month following the month during which all records pertaining to the obligation were made available to the secretary;

(f) A handler's obligation under this Plan shall not be terminated for any transaction involving fraud or willful concealment of a fact on the part of the handler against whom the obligation is being imposed;

(g) Unless the handler gives notice within the applicable two-year period, the obligation of the secretary to pay a handler any money the handler claims to be due under the provisions of this Plan shall terminate two years after the end of the month during which the market milk involved in the claim was received.

Section 1004. If the gross pool obligation of the handler, as computed under Section 900, is less than the amount owed producers under Subparagraphs 1001(b)(1), (2) and (3) the secretary shall make payment of any difference to such handler from funds available in the Producer Equalization Funds on the 28th day after the end of the month or as soon thereafter as funds are available, provided that if adequate funds are not available in the appropriate fund on such date, a proportionate distribution of available funds shall be made to all handlers entitled to receive payments under this section.

ORDER GRANTING CERTIORARI

SUPREME COURT OF THE UNITED STATES

01-950

HILLSIDE DAIRY INC., A&A DAIRY, L&S DAIRY, AND MILKY WAY FARMS,
Petitioners,

v.

WILLIAM J. LYONS, JR., SECRETARY, CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, ET AL.,
Respondents.

01-1018

PONDEROSA DAIRY, PAHRUMP DAIRY, ROCKVIEW DAIRIES, INC., AND D. KUIPER DAIRY,
Petitioners,

v.

WILLIAM J. LYONS, JR., SECRETARY, CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, ET AL.,
Respondents.

January 10, 2003

Case below, 259 F.3d 1148

Petitions for writs of certiorari to the United States Court of Appeals for the Ninth Circuit granted. The cases are consolidated and a total of one hour is allotted for oral argument.